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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/808,694

03/25/2004

Frederic Legrand

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EXAMINER

ELHILO, EISA B

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 04/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/808,694	<b>Applicant(s)</b> LEGRAND ET AL.	
	<b>Examiner</b> Eisa B. Elhilo	<b>Art Unit</b> 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 31-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 and 31-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/1/04</u> & <u>11/9/04</u> . | 6) <input type="checkbox"/> Other: _____  |

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Claims 1-29 and 31-62 are pending in this application.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 2 objected to because of the following informalities:

Claim 2, recites the term “preferably”. This term should be replaced by the term “selected from the group consisting of” to make the claim in a proper form. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-20, 22-28, 31-49 and 52-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias (US 6,540,791 B1).

Dias (US’ 791 B1) teaches a method for preparing a hair bleaching composition by mixing the bleaching ingredients of the composition in a single bottle (see col. 48, lines 11-20), wherein the bleaching composition comprising an oxidizing agents such as hydrogen peroxide, persulfates and bromates as claimed in claims 1, 4, 7, 15 and 18-19 (see col. 4, line 62 and col. 5, lines 21-34) and sequestering agents such as iminodisuccinic acid that represents the claimed formula (I) and wherein the sequestering agents may be used in the form of their alkali metal salts, alkaline earth metal salts or ammonium salts as claimed in claims 1-3, 5,7, 15-17, 20 (see col. 8, lines 25-28 and line 65), wherein the composition further comprises cationic and nonionic

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amphiphilic polymers as conditioning polymers as claimed in claims 8-9, 34 and 22 (see col. 15, lines 45-50), wherein the amphiphilic polymer is presented in the amount of 0.05 to 20 % and 0.1 to 10% as claimed in claims 35-36 and 54-55 (see col. 15, lines 19-20), surfactants in the amounts of 0.01 to 50% which covered the claimed ranges as claimed in claims 10, 37-39 and 56-59 (see col. 9, lines 42-59), rheology modifiers (sodium alginate or gum Arabic) in the amount of 0.05 to 20% as claimed in claims 11 and 40-42 (see col. 15, lines 17-20 and 39), alkalizing agents (basifying agents) in the amounts of 0.1 to 20% which within the claimed ranges as claimed in claims 12 and 60 (see col. 7, lines 34-41), solvents in the amounts of 5 to 99.98% which overlapped with the claimed ranges as claimed in claims 13, 43-46 and 61-62 (see col. 45, lines 1-14), silicone as claimed in claims 14, 23 and 47(see col. 19, lines 1-67) cationic polymers in the amounts of 0.1 to 10% which overlapped with the claimed ranges as claimed in claims 31-33 and 52-53 (see col. 15, lines 51-56), . Dias (US' 791 B1) also teaches methods for bleaching and/or coloring hair as claimed in claims 24-26, 48-49 and 63(see col. 31, lines 44-67 and col. 49, lines 24-43). Dias (US' 791 B1) further teaches a hair bleaching and coloring kits as claimed in claimed 27-28 (see col. 54, claim 19).

Although Dias (US' 791B1) teaches a hair bleaching composition comprising oxidizing agents and sequestering agents, the reference does not require such a bleaching composition with sufficient specificity to constitute anticipation.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply such a composition to the keratin fibers by using such a method, because such a composition that comprises oxidizing agents and sequestering agents falls within the scope of those taught by Dias. Therefore, one of ordinary skill in the art would have had a

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reasonable expectation of success, because such a composition is expressly suggested by Dias disclosure and therefore is an obvious formulation.

3 Claims 6 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias (US 6,540,791 B1) in view of Huglin et al. (WO 00/25730).

The disclosure of Dias (US' 791 B1) as described above, does not teach or disclose methylglycinediacetic acid as claimed in claims 6 and 21.

Huglin et al. (WO' 730) in analogous art of hair bleaching formulation, teaches a composition comprising methylglycindiactic acid as claimed in claims 6 and 21 (see page 14, formula 72).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Dias by incorporating the compound methylglycinediacetic acid as taught by Huglin et al. (WO' 730) to arrive at the claimed invention with the reasonable expectation of success for protecting the hair against photolytic degradation and would expect such a composition to have similar properties to those claimed, absent unexpected results.

3 Claims 29 and 50-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias (US 6,540,791 B1) in view of Di La Mettrie et al. (US 6,254,646 B1).

The disclosure of Dias (US' 791 B1) as described above, does not teach or disclose a process for permanently reshaping keratin fibers as claimed.

Di La Mettire et al. (US' 646 B1) in analogous art of hair treating formulation, teaches a process for reshaping hair comprising the step of applying to the hair a reducing composition

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followed by applying an oxidizing composition as claimed in claims 50-51 (see col. 13, lines 9-19).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to utilize a reducing composition followed by a bleaching (oxidizing) composition for permanent reshaping the hair as taught by Di La Mettire et al. (US' 646 B1) and would expect such a process to have similar properties to those claimed, absent unexpected results.

With respect to claim 29, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a kit for permanent reshaping hair by separating the reducing composition from the oxidizing composition to arrive at the claimed invention because De La Mittre et al. (US' 646 B1) clearly teaches a reducing composition and an oxidizing composition which implies that the two compositions are separated from each other and thus, a person of the ordinary skill in the art would be motivated to keep the reducing composition and the oxidizing composition in the separate containers to arrive at the claimed invention.

### ***Conclusion***


The references listed on from PTO-1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Eisa Elhilo  
Primary Examiner  
Art Unit 1751

April 20, 2006